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**Testimony of William Lewis
Real Property Section**

IN SUPPORT

HB5219

AAC MAINTENANCE OF PRIVATE EASEMENTS AND RIGHTS-OF-WAY

**February 24, 2014
Judiciary Committee**

Sen. Coleman, Rep. Fox, members of the Judiciary Committee:

My name is William Lewis and I am here today representing the Real Property Section of the CT Bar Association in our **SUPPORT for HB5219, AN ACT CONCERNING MAINTENANCE OF PRIVATE EASEMENTS AND RIGHTS-OF-WAY.**

By way of background, the Fannie Mae Selling Guide (the "Selling Guide") contains the underwriting requirements that loans and properties must meet before a mortgage may be sold to Fannie Mae. Any residential mortgage intended to be sold on the secondary market, which is virtually all of them, must meet the requirements in the Selling Guide. The CBA's Real Property section's proposed bill addresses requirements of **Section B4-1.4-08** of the Selling Guide, which requires that if a property subject to a Fannie Mae mortgage "is located on a community-owned or privately-owned and maintained street, an adequate, legally enforceable agreement or covenant for maintenance of the street is required." That is, a loan will not be made on a property located on a private right of way or shared driveway unless there is a recorded, written maintenance agreement.

There is an exception in the Selling Guide, however, for states that have statutory provisions defining the responsibilities of property owners for the maintenance and repair of a private street or roadway. In these states, no separate agreement or covenant is required and the relevant section of the Selling Guide is satisfied.

Here in Connecticut, we have many such privately owned streets and shared driveways, and very frequently the homeowners will have only a verbal agreement, if they have any agreement at all, regarding maintenance of the roadway. And, unlike some other states, we do not have a statutory provision that mirrors the requirements set forth above.

The result for property owners is that, in a state such as ours where there is no statutory requirement for maintenance, if there is no agreement or covenant for maintenance of the street, or if an agreement or covenant exists but does not meet the requirements set forth in the Selling Guide, many sales and refinance closings are being held up or even canceled because this requirement is not met.

Therefore, in order to solve this problem, we are proposing legislation to establish a “statutory backdrop” governing the responsibilities for maintenance of private rights of way in Connecticut. We used as a loose model for the proposed legislation a statute that exists in the California Civil Code, which we were pointed to by a representative of Fannie Mae.

The proposed statute governs those situations where there is no enforceable, written agreement concerning maintenance of the right of way. Our goal was to codify what we believe the common law rule to be rather than to change existing law, and to provide a simple, elegant and equitable rule to guide courts if disputes arise in resolving conflicts among property owners.